



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2004

Ms. April M. Virnig
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2004-5372

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204433.

The City of Kennedale (the "city"), which you represent, received a request for all financial accounts of the city's Mayor, the city secretary, and the city manager. The requestor also specifies that

[he] also wish[es] to see the . . . general expense funds and where the monies went and not limited to any speacial [sic] accounts such as christmas [sic] funds, where the exact expense's [sic] went to and all known contributors and donations. All checks written within the past 2 years. Also all accounts that may be held personally and used for city business.

You state that the financial accounts for the Christmas fund do not constitute public information. You also claim that certain account numbers are excepted from disclosure under section 552.136 of the Government Code. We have considered your arguments and reviewed the submitted information.¹

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. To the extent any other types of information responsive to the request existed on the date you received this request, we presume you have released this information to the requestor. If not, you must do so at this time.

The Public Information Act (the "Act"), chapter 552 of the Government Code, is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all of the information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.022(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also applies to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2).

Under the Act, a governmental body must make a good-faith effort to relate a request for information to public information that is within the governmental body's possession or control. See Open Records Decision No. 561 at 8-9 (1990). However, the Act does not require a governmental body to answer factual questions, conduct legal research, release information that does not exist, or create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that received the request for it. See Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). Thus, any information to which the city does not have a right of access would not be considered "public information" under the Act.

You state that financial accounts for the Christmas fund do not constitute public information because the fund is not maintained by the city. You also state that the city "has neither possession of the requested financial account information nor a right of access to it." You have also provided a letter from the individual who holds the account in which he explains that the account is not managed in any way by the city and that no funds have ever belonged to the city. Based on your representations, we conclude that the requested information related to the Christmas fund is not "public information" under the Act because the city neither possesses nor has access to this information. See Gov't Code § 552.002.

We now turn to your argument under section 552.136 for the submitted check copies. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The city must, therefore, withhold the bank account numbers we have marked under section 552.136. The remaining information must be released.

In summary, we conclude that the requested information related to the Christmas fund is not public information under the Act. The bank account numbers we have marked are confidential under section 552.136 of the Government Code. All remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah I. Swanson', with a long horizontal flourish extending to the right.

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/krl

Ref: ID# 204433

Enc. Submitted documents

c: Eric Elam
349 Kennedale/sublett Rd.
Kennedale, Texas 76060
(w/o enclosures)